

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMAURY URENA,

Plaintiff,

- against -

CAPTAIN SHAW,

Defendant.

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**ANSWER TO THE
COMPLAINT BY
DEFENDANT SHAW**

22-CV-04679 (RA)

Jury Trial Demanded

Defendant Captain Shaw, by his attorney Hon. Sylvia O. Hinds-Radix,¹ Corporation Counsel of the City of New York, for his Answer to the Complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in Section “I(A)” of the Complaint, except admits, upon information and belief, that plaintiff was detained at the New York City Department of Correction (“DOC”) George R. Vierno Center (“GRVC”) on Rikers Island, 09-09 Hazen Street, East Elmhurst in Queens, New York, on or about May 5, 2022.

2. Denies the allegations set forth in Section “I(B)” of the Complaint, except admits that defendant Shaw was employed by the City of New York and assigned to the North Infirmery Command (“NIC”), located at 15-00 Hazen Street, East Elmhurst, NY, 11370, on or about April 21, 2022.

3. Denies the allegations set forth in Sections “II(A)-(C)” of the Complaint, except admits that plaintiff was present in the intake search room at NIC on or about April 21, 2022.

¹ This case has been assigned to Assistant Corporation Counsel Bailey Forcier, who is awaiting admission to the New York Bar. Ms. Forcier is handling this matter under supervision and may be reached at (212) 356-5054 or bforcier@law.nyc.gov.

4. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “1,”² except admits that plaintiff was lawfully strip searched at NIC on April 21, 2022.

5. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “2,” except admits that plaintiff refused to follow several orders on or about April 21, 2022.

6. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “3,” except admits that plaintiff refused to follow several orders on or about April 21, 2022.

7. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “4,” except admits that defendant Shaw left the search room on or about April 21, 2022.

8. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “5.”

9. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “6.”

10. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “7,” except admits that defendant Shaw lawfully discharged a chemical agent towards plaintiff on or about April 21, 2022.

11. Denies the allegations set forth in Section “II(D)” of the Complaint labeled paragraph “8.”

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Section “III” of the Complaint.

² For the Court’s convenience, defendant has numbered each individual paragraph in Section “II(D)” of the Complaint. The labeled Complaint is attached as Exhibit A.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “IV” of the Complaint, except admits that plaintiff’s claim arose while he was incarcerated and that there were grievance procedures available to plaintiff.

14. Denies the allegations set forth in Section “V” of the Complaint, except admits that plaintiff purports to seek relief as stated therein.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “VI” of the Complaint, except admits, upon information and belief, that plaintiff has filed other federal lawsuits relating to his imprisonment.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

16. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

17. Any force used was reasonable under the circumstances.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

18. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendant Shaw.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

19. Defendant Shaw has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant Shaw violated any acts of Congress providing for the protection of civil rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

20. Plaintiff's claims may be barred, in whole or in part, by the Prison Litigation Reform Act, 42 U.S.C. § 1997e ("PLRA"), for failure to exhaust his administrative remedies.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

21. To the extent that plaintiff alleges claims under New York State law, such claims may be barred, in whole or in part, because of plaintiff's failure to comply with New York General Municipal Law §§ 50(e), et seq.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

22. Defendant Shaw has not violated any clearly established constitutional or statutory right of which a reasonable person would have known and, therefore, is entitled to qualified immunity.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

23. Plaintiff may have failed to mitigate his alleged damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

24. Plaintiff provoked any incident.

WHEREFORE, defendant Shaw requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 24, 2022

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